IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1159 of 1995

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT
and
Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRABHATSINH @ BALU VAHSI RATHOD
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 1159 of 1995
MR ATUL H MEHTA for appellants
MR KP RAVAL, APP for Respondent

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and
MR.JUSTICE R.K.ABICHANDANI

Date of decision: 21/05/2003

ORAL JUDGEMENT

(Per : ACTING CHIEF JUSTICE MR.JN BHATT)

Whether the culpability established against the appellants-original accused persons is murder simpliciter, or culpable homicide not amounting to murder, is the core question which has been placed in focus in this conviction appeal for our consideration and adjudication, by way of challenge against the judgment and order of the learned Sessions Judge, Godhra, in Sessions Case No.54 of 1995, recorded on 27.11.95.

With a view to appreciating the merits of this appeal, we deem it expedient to first give a short spectrum of factual profile giving rise to this appeal.

The unfortunate incident of killing of one Kalubhai Deepsinh occurred, on an unfateful day, i.e. 1.12.94, at about 1.15 p.m. in village Khanpur-no-falia of Godhra district, where, the appellants, accused persons have allegedly committed murder of deceased Kalubhai as per the prosecution case. Appellant No.1 original accused No.1, Prabhatsinh Vagsinh and appellant No.2, original accused No.2, Laxmansinh Vaghsinh, who are hereinafter referred to as A-1 and A-2 for the sake of convenience, are brothers. The motive ascribed by the prosecution is that the deceased and the wife of A-1 had illicit relationship.

On the day of incident, A-1 inflicted one Dharia blow on the person of the deceased on the right side of his neck which ultimately proved to be fatal, whereas, A-2, who was armed with stick inflicted stick blow on the back portion of the deceased. The prosecution case runs further mentioning that both the accused persons intended to cause murder of Kalubhai and both the accused persons conjointly aiding and assisting each other committed the offence punishable under section 302 read with section 114 of the Indian Penal Code. On the basis of the charges, framed, on 4.9.95, by the Sessions Court, the trial proceeded and accused persons pleaded not guilty and hence the trial.

The complaint came to be lodged by the brother of the deceased, Pratapsinh Deepsinh, in Rajgat Police station and that is how offence came to be registered with C.R. No.128/94, and thus got away the investigation. After the commencement of investigation, the Investigating Officer, PSI Mr.Baria visited the venue of offence, recorded panchnama, got the dead body photographed and recorded the statements of witnesses. In the meantime, A-1 who presented himself in the Rajgat Police Station

came to be arrested. In course of further investigation, thereafter, in presence of two Panchas, discovery panchnama came to be recorded in which both the incriminating weapons, Dharia and stick came to be recovered. After performing the inquest panchnama, the dead body of the deceased was forwarded for post-mortem examination and thereafter further statements were also recorded.

Upon completion of the investigation, chargesheet followed in the court of learned JMFC, Devgadbaria and the learned JMFC in turn, since it is a Sessions triable case, committed the case to the Sessions Court, Godhra under section 209 of the Code of Criminal Procedure (Cr.P.C.). Learned Additional Sessions Judge framed the charge, at Ex.3, to which both the accused persons denied and claimed to be tried and hence the trial proceeded.

The prosecution relied on oral and documentary evidence to which reference will be made, hereinafter, at an appropriate stage, as and when required. Upon completion of recording of evidence, further statement as mandated under section 313 of the Cr.P.C., also, came to be recorded, where the accused person remained consistent in denying the allegations and charges against them.

The learned Sessions who conducted the trial in Sessions Case No.54/95, upon examination, evaluation and assessment of both, oral as well as, documentary evidence, reached to the conclusion and held A-1 guilty for the offence punishable under section 302 and awarded life imprisonment and also fine of Rs.500 and in default two months rigourous imprisonment, whereas, A-2 came to be convicted under section 302 read with section 114 of the IP Code and has been awarded imprisonment for life and also fine of Rs.500 and in default two months rigourous imprisonment, by the judgment and order dated 27th November 1995.

At the instance of the accused persons, this conviction appeal came to be filed by invocation of the provisions of section 374 of the Cr.P.C. and this specially constituted Bench, unusually in a summer vacation, took up this matter, wherein, accused persons are languishing in jail since more than a spell of eight years.

We have, dispassionately, heard the learned advocate Mr.Mehta appearing for the original accused persons, appellants before us, as well as the learned Additional Prosecutor, Mr.Raval. We have also scanned, scrutinised and evaluated the entire conspectus of, viva-voce, as

well as documentary evidence on record.

Firstly, we must put it on record of this case that the learned advocate for the accused persons, in the light of the factual profile and the supporting evidence of the case of the prosecution, has, mainly, emphasized on the nature and type of culpability established against the accused persons. In that, it has been submitted that from the brief facts on record of the case, it cannot be said that the complicity of both the accused persons is falling within the provisions of section 302 of the IPC as in view of the peculiar facts emerging from the record, there was a grave and sudden provocation and resultant loss of self-control which culminated into unfortunate death of deceased Kalubhai and, therefore, it has been vehemently contended, if not repeatedly, that the culpability of both the accused persons, at the best, would be covered under Exception 1 to section 300 of IPC. It is a mitigating and extenuating circumstances to which there is no any serious opposition, in the light of the facts, even by the learned Additional Public Prosecutor.

In short, the sole question which is required to be considered, analysed and adjudicated upon in this conviction appeal revolves around the nature and type of the complicity established for the killing of deceased Kalu Deepsinh, which is referable to the acts of the accused persons, would tantamount to an offence punishable under the provisions of section 302 or under section 304 Part I of the IPC ?

Although, in view of the sole submission about the type of nature of the offence and punishment under the provisions of section 304 Part I, instead of one under section 302 of the IPC, we have scanned through, analysed and threadbare considered and evaluated the entire testimonial, as well as, documentary collection placed on record in support of the accused persons for the satisfaction of the judicial conscience.

We are satisfied that the views and the ultimate conclusion recorded by the Trial Court in holding both the accused persons guilty insofar as the killing of deceased Kalu Deepsinh is concerned, is justified. The punishment by the Trial Court by invocation of the provisions of section 302 read with section 114 of the IP Code is only questioned before us. In so far as, the homicidal death of deceased Kalubhai is concerned, there is ample and sufficient evidence leading to an unerring conclusion that the homicidal death of deceased Kalubhai is directly referable and attributable to the acts of the

accused persons, as alleged by the prosecution.

The Learned Trial Court Judge, as well as, both of us have found the evidence of eye witness Savita (PW-2), wife of complainant, Pratapsinh, quite justified, dependable, reliable and creditworthy on the main characteristics and features of the homicidal death. It is true that there are two contradictions found in her evidence on being confronted with the statement before the Police under section 161 of the Cr.P.C. But, they are at the micro level and they do not, as such, affect the credibility of the evidence of eye witness, PW-2, Savita. She is, as such a relative of A-1 Prabhatsinh. A-1, Prabhatsinh is the husband of mother's sister (Masa) of Savita. Her evidence is quite natural. Her presence remains unquestionable at the time of commission of unfortunate incident. On appraisal of her evidence, we have not found any serious deficiency or any material irregularity or serious contradictions. On the contrary, her evidence in so far as the main theme and heart of the prosecution story is concerned, runs like a knife going through the butter. We, therefore, have no reason whatsoever to discard her testimony.

The second important aspect which is required to be articulated, at this juncture, is that eye-witness Savita's (PW-2) testimony is, significantly, reinforced by the medical evidence from which we can succinctly notice that the evidence of Savita and medical evidence are quite compatible and acceptable. Thirdly, the complaint came to be lodged without any loss of time and the muddamal articles were also recovered. The motive part which is not as such, imperative to establish the offence is also succinctly spelt out without any doubt.

In so far as the culpability of the accused persons is concerned, one more aspect needs to be highlighted, that is the role and the plea of aiding and abetting in offence committed by A-1 by A-2. After having given our anxious thoughts and considerations to the facts and circumstances emerging from the record and the manner and mode in which both of them moved together near the house of the deceased after the exchange of hot words and altercations about the involvement of deceased with the wife of A-1, Prabhatsinh, we are left with no alternative but to conclude that A-2 is liable, accountable and responsible for actively assisting and abetting the commission of offence by A-1 by inflicting a very deadly blow with force with deadly weapon i.e. Dharia and followed by stock blow by A-2. We are, therefore, of the clear opinion that the culpability of both the accused

persons is established without any doubt.

Now the important question which falls for our consideration is as to what offence is committed in the peculiar facts and circumstances emerging from the record of the case. The main emphasise in course of the marathon submissions before us by learned advocate Mr.Mehta in defence of the accused persons has been that the accused persons are entitled or not to the benefit of exception 1 to section 300 of the IPC. In our opinion, this aspect requires serious consideration as it is fairly arguable. Before we dwell upon this main contention, we would like to project and highlight the essential characteristics and material ingredients and the dividing thin, but real line, between the offence of culpable homicide amounting to murder and culpable homicide not amounting to murder.

In this connection, we cannot resist the temptation of placing on record that the mechanism provided in Chapter XVI of the Indian Penal Code evidently unfolds in as many as 80 sections about the punishments in case of bodily harm and injuries. We are concerned with homicidal death and whether it is a murder or a culpable homicide not amounting to murder in the light of the provisions of Exception 1 to Section 300 of IPC. Homicide is a killing of human being by a human being. It may be (a) lawful and (b) unlawful. Lawful homicide could be categorized as follows:

(1) Excusable homicide (section 80 and 82-85);
(2) Justifiable homicide (Section 76, 77, 78 and 79)

Unlawful homicide could be divided in three categories:

(1) Culpable homicide (section 299)
(2) Causing of death on account of rash or negligent act not amounting to culpable homicide (section 304-A)
(3) Suicide (section 305 and 306).

Section 299 defines culpable homicide simpliciter. The mechanism of the provisions under section 299 of the IPC is that first the genus "culpable homicide" is defined and then murder which is a species of culpable homicide is defined. What is left out of culpable homicide after the special characteristics of murder have been taken away from it is culpable homicide not amounting to murder.

Subject to four exceptions to section 300, every act

which falls within one or more of the four clauses of that section is murder and also falls within the definition of culpable homicide as provided in section 299 in respect of which there co-exist one or more sets of circumstances described in five exceptions is by that act taken out of section 300, but the act continues to be within section 299 and since it is not murder, it is culpable homicide not amounting to murder. Every act that falls within section 299 and does not fall within section 300, since it is not a murder, is culpable homicide not amounting to murder.

The degrees of culpable homicide could be articulated as under;

(a) Culpable homicide of the lowest degree, punishable with imprisonment which may extent upto 10 years or with fine or with both (section 304 Part II);

(b) Culpable homicide of the middle degree which is made punishable with imprisonment upto the limit of 10 years or with imprisonment for life (section 304 Part I);

(c) Culpable homicide of the highest degree or murder which is made punishable with death or imprisonment for life as provided in section 302.

The following are the characteristics and elements necessary to constitute culpable homicide:

(a) the causing of death,

(b) the doing of an act, and

(c) the presence of intention to kill or knowledge that the act was likely to cause death.

What is culpable homicide is statutorily defined in section 299 with three exceptions. What is murder is provided in section 300 of the IPC. All manslaughters are not murder, but all murders are, undoubtedly, manslaughters. Exception 3 carves out a benefit to be earned by the accused provided the conditions incorporated in exception 1 are satisfied in the light of the factual profile emerging from the record. Section 300 provides, what is murder. Except in cases accepted in section 300 exceptions, culpable homicide is murder. Exception 1 provides as to when culpable homicide is not murder. This is the relevant and important Exception

distinguishing the type of manslaughter or homicide. Since it provides for offence which is culpable homicide not amounting to murder and since this statutory provision is sought to be invoked in favour of the accused persons by the learned counsel appearing for appellants, we deem it necessary to refer to the same. It reads as under:

"300 Murder - Except in cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or -

Secondly - if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or -

Thirdly, If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature of cause death, or -

Fourthly, If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception I. - When culpable homicide is not murder - Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos

Firstly -- That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly - That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly - That the provocation is not

given by anything done in the lawful exercise of the right of private defence.

Explanation - That the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact."

Exception 1 to section 300 provides that when an act is done suddenly and in the heat of passion caused by provocation is as it were something done automatically or impulsively and at a time when there is a temporary suspension of the reason, an act so done is not controlled or planned or perceived or deliberate. It is, therefore, rightly said that the defence of provocation may arise where a person does intend to kill or inflict grievous bodily harm but his intention to do so arises from sudden passion involving loss of self-control emanated by grave and sudden provocation at the instance of the victim.

In determining the issue whether the act of the accused in question amounts to offence of murder or culpable homicide simpliciter, the Court ought not to lead itself to confusion, but must turn to the words of the sections. Apparently, therefore, if the homicide comes within anyone of the four clauses of section 300 and not under its exceptions, then it would be a case of murder.

In any case, provocation must be the cause and not an excuse for the crime. Vindictive act or preparation and pre-meditation are excluded as they are acts inconsistent with the assumption of loss of self-control. Whether provocation was grave and sudden enough to prevent crime from amounting to murder is a question of fact. However, one thing is certain that an act which is sudden and in the heat of moment caused by provocation or it is done impulsively and at a time there is temporary suspension of reason, generator or contributor of which is the victim, then, in that case, benefit is available. The Court has to see as to whether the accused has acted under grave and sudden provocation and whether the provocation at the instance of the victim was in the circumstances of the case, likely for a normal and reasonable person to lose self-control to the extent of inflicting injury or injuries that he did inflict and while determining whether the provocation was of that character one should take into account the condition of mind in which the offender was at the time of provocation. The provocation ought to be such that it would upset not merely the hot-tempered or hyper sensitive personality, but the person of ordinary sense and prudence. Obviously, the law does not take into

consideration the abnormal creatures reacting abnormally and only contemplates acting of normal human beings in a given situation.

As discussed above, the whole doctrine relating to provocation depends on the fact that it causes, or may cause, a sudden and temporary loss of self-control whereby, malice, which is the formation of an intention to kill or to inflict grievous bodily harm, is negative. Consequently, where the provocation inspires an actual intention to kill or to inflict grievous bodily harm, the doctrine that provocation may reduce murder to manslaughter. The question that, now, comes to the mind is as to when the benefit under Exception 1 to section 300 can be drawn as mitigation of crime. Therefore, we have to look upon and consider the essentials of Exception 1 of Section 300. Adverting first to the rule itself, provocation is an extenuation only when the offender receives (i) grave and sudden provocation and (ii) in consequence of which he is deprived of the power of self-control. What is then grave and sudden provocation? Is the loss of self-control a test of its gravity? It is no doubt, a test but by no means an infallible one. It is also true that not only words, but also act may constitute sufficient provocation. The intention of this Exception is very important to be considered. Provocation must be both grave and sudden, whether it is agrave and sudden is a matter depending upon the factual panorama of each case. Mere provision or plea, ipso facto, could not constitute an sufficient and efficient plea in absence of it being grave an sudden and resulting into deprivation of self-control, so as to earn the benefit of the provisions of Exception 1 to section 300 of IPC. Once an offence is committed in loss of self-control, emanated out of grave an sudden provocation at the instance of the victim of the attack, it would fall and embrace the statutory benefit incorporated in Exception 1 to Section 300 of IPC. Of course, deprivation of self-control by a victim on account of sudden and grave provocation at the instance of the victim does not obliterate the character of an offence, but it would change the type of punishment and the nature of offence from murder simpliciter to culpable homicide not amounting to murder. Thus, the sudden and grave provocation resulting into loss of self-control of an individual will be a mitigating and extenuating factor which would convert the murder into a manslaughter simpliciter or culpable homicide not amounting to murder.

Be it noted that the time factor is also very material in cases of provocation. Literary and rationally, grave and

sudden provocation would mean that on hearing the words or on seeing the things or in certain cases non-verbal gestures, will to provocation then and thee. This may be grave and sudden provocation on account of verbal or non-verbal gesture of the victim and if some commission or an act or offence is done in the period of loss of self-control. It is statutorily considered on a lower level than the murder and that is known as manslaughter simpliciter or culpable homicide not amounting to murder. In some cases there may be some interval, but the provocation is continuous act, then in that case, the benefit of Exception 1 can be, successfully, pressed into service by the accused persons. Again, it would depend upon the facts of each case. It is in this context, it would be necessary to examine, in the light of the facts of the present case as to whether in these legal background and settled proposition of law, the appellants, original accused persons, are entitled to the benefit of Exception 1 to section 300 of IPC or not.

This view is very much reinforced by the observations and legal proposition expounded in, virtually identical facts, by the Hon'ble Apex Court in V. Sreedharan v. State of Kerala, AIR 1992 SC 754.

With this minor digression from the main route, for the purpose of highlighting the relevant, expounded and settled proposition of law as regards eligibility to earn the benefit under Exception 1 to Section 300 of IPC, let us revert to the factual matrix with a view to examining and evaluating whether the appellants are as such, entitled to earn the benefits of the provisions of Exception 1 to Section 300 of IPC.

We have deeply probed this aspect. We are also assisted by the learned defence counsel Mr. Mehta as well as the learned Additional Public Prosecutor Mr.Raval. We would like to herald and highlight the following circumstances which would, unquestionably, lead to the conclusion that the appellants before us, original accused, are entitled to and qualified to earn the benefit of the said provision.

(1) The prosecution case as manifested from the charge is explicit, in so far as, the motive is concerned, in which it is stated that the deceased Kalubhai and one Savita, wife of A-1, Prabhatsinh were in illicit relationship and it was not unknown to family, friends and many persons in the same village. With a view to reinforce the complicity of the accused persons,

the prosecution has pressed into service this as a motive.

(2) In view of the circumstances as aforesaid, evidence as unfolded from the record is that on the unfateful day, deceased Kalubhai went to the house of A-1, Prabhatsinh, which is about 80 to 85 ft. away from the house of deceased which is also manifested from Ex.20, rough sketch or map produced on record by the prosecution, at around 12.15 noon (p.m.) and there was exchange of hot words, probably abuses and verbal altercations, which consumed almost half-an-hour. Thereafter, deceased Kalubhai returned to his home and sat on the front side of his house, which is popularly and colloquially known as "Otla". Thereafter, A-1 armed with Dharia and A-2 armed with stick went near the house of the deceased where he was sitting outside. Again there was verbal altercation.

(3) As evidenced by complaint Ex.25 and supported by evidence of others from the record, the accused persons on coming near the house of the deceased Kalubhai, there had been hot verbal exchanges. They also abused each other and A-1 Prabhatsinh addressing deceased Kalubhai inquired as to why he was keeping illicit relationship with his wife.

(4) It is found from the evidence of only eye-witness Savita (PW-2) that A-1, Prabhatsinh was told by deceased Kalubhai that he (Kalubhai) would like to keep his (A-1) wife which was followed by verbal altercations. It has also come out from the evidence of eye witness Savita that A-1, who is the husband of her mother's sister had asked deceased Kalubhai as to why deceased was keeping illicit relationship with his wife. At that time, deceased Kalubhai stood up in the compound and told A-1 as to whether if he were to beat him, he was ready for that.

(5) Had there been an intention to finish deceased Kalubhai immediately on reaching near the house of the deceased, the accused persons without questioning the deceased could have attacked him as they were, also, armed and the victim was unarmed. Instead, there is again, verbal altercations and exchange of abuses and accusation against the chastity of the wife of

A-1. That is the reason which provoked A-1.

(6) Here, it would be profitable to refer to one more incident which would support the plea of benefit of Exception 1 to Section 300 of IPC in the form of fact that even after coming near to the house of the deceased, the complainant, brother of the deceased, Pratapsinh went to answer the call of nature when verbal altercations and exchange of words was in process and this act signifies that till that stage, the accused persons did not intend to finish the deceased. Otherwise, brother of the deceased would not go for a work which could have been delayed for some time.

In short, the questioning of the chastity of the wife of A-1 and the illicit relationship between the wife of A-1 and the deceased was the background of quarrel. Could it be said even for a moment that infidelity of wife or questioning the chastity of wife would not be an act of provocation or indignation ? Could not be said that such a provocation would not be grave and sudden in the factual premises of the facts of the case on hand? Obviously, therefore, the attack was prompted and motivated by the serious verbal allegations against the wife of A-1, Prabhatsinh and also the fact that the deceased went to the length of saying that he would keep the wife of A-1 with him, which in other words would be that he would keep A-1's wife as his his wife. Ordinarily, even a man of prudence in such a situation would definitely lose self-control as he would become victim of grave and sudden provocation at the instance of the victim, unless a person has a super-spiritual thinking and approach or a person who has deficient faculty of mind. Judging by this yardstick in the factual background of the case on hand, it can safely be concluded that because of the allegation so serious in nature and so disgraceful in content against the wife of A-1, he inflicted dharia blow on the neck portion of the victim on account of loss of self-control due to grave and sudden provocation, the creator of which was the victim. A-2, the brother of A-1 was aiding and assisting the act and commission of A-1 and therefore, in our opinion, appellants are qualified and eligible to claim and earn the benefit of Exception 1 to Section 300 of IPC. Therefore, the conviction recorded against them under section 302 read with section 114 of the IPC by the Trial Court cannot be justified and upheld and requires to be converted. We therefore convert the conviction of both the accused persons, appellant before us, from section 302 read with section 114 to section 304 Part I

read with section 114 of the IPC.

Section 304 Part I prescribes punishment for culpable homicide not amounting to murder and the offence shall be punishable with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Therefore, the question that would emerge is as to the quantum of punishment to be awarded in the light of the facts of the present case and considering the statement of the accused under section 235(2) of the Cr.P.C.

It is a settled proposition of law that the purpose and design of punishment, the personal circumstances of the accused persons, type and nature of offence alleged and such other relevant aspects are required to be drawn into scale so as to inflict reasonable and just quantum of punishment, which should meet the ends of justice. The principles and parameters for the purpose of fixity of quantum of punishment are extensively examined and expounded in catena of judicial pronouncements and therefore, the same would not detain us any longer.

After taking into account the factual profile in this regard, the design and desidertum of the provisions of section 302 and 304 part I of the IPC and the personal facts and circumstances of the accused persons, the gist and genesis of the culpability and various other circumstances and the relevant proposition of law on this point prevalent for the modern penology and criminology, we are of the opinion that the ends of justice will be met, if accused persons are awarded rigourous imprisonment for 10 years and fine of Rs.500/- and in default rigourous imprisonment for two months. It has been stated that the accused persons have already undergone as undertrial prisoners and in the custody after the conviction and during the pendency of hearing of this appeal for a spell of more than eight-and-half years. We, therefore, find that the impugned judgment and order of the Trial Court in so far as the culpability is concerned, the same is required to be confirmed. But in so far as conviction under section 302 read with section 114 of the IPC is concerned, the same is required to be quashed and substituted with one under section 304 Part I read with section 114 of IPC.

Consequently, the impugned judgment and order of the Trial Court in so far as culpability is concerned, the same is confirmed. But in so far as conviction under section 302 read with 114 of the IPC is concerned, the same is converted into one under section 304 Part I read

with section 114 of the IPC. Consequently, the conviction of both the accused persons by invocation of the provisions of section 302 read with 114 of the IPC and resultant imprisonment for life as awarded by the Trial Court shall stand modified and substituted with rigourous imprisonment for ten years with fine of Rs.500/- and in default two months' rigourous imprisonment under section 304 part I read with section 114 of IPC. The appeal accordingly shall stand partly allowed.

(J.N.Bhatt, Acting CJ)

I agree.

(R.K.Abichandani, J.)

(vjn)